

Date: January 25, 2008

To: Marlene H. Dortch, Secretary  
Federal Communications Commission  
Office of the Secretary  
445 12th Street, SW  
Washington, D.C. 20554

Re: In the matter of: Request for Review or Waiver by the Board of Education of the Columbus  
Public Schools of Decision of Universal Service Administrator/ Ref. FCC Docket No. 02-6

LETTER OF APPEAL on "Notification of Improperly Disbursed Fund" (dated November  
28, 2007)

E-Rate Funding Year 2003-2004

From: Columbus Public Schools ("CPS")  
Contact Person: Wm. Michael Hanna and Amanda Scheeser, Counsel for CPS (216) 479-8500  
Billed Entity Number: 129175  
Application Number: 376510  
FRN No. 1045325

Columbus Public Schools appeals the Universal Service Administrative Company's (USAC) Notification of Improperly Disbursed Funds issued on November 28, 2007 seeking reimbursement of \$263,809.00 because it determined that CPS did not have an approved technology plan for part of the 2003-2004 funding year. USAC's determination is erroneous and should be corrected. CPS seeks review of the following issues on appeal:

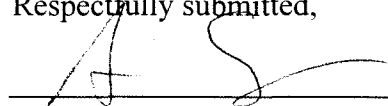
- A. WHETHER CPS' TECHNOLOGY PLAN APPROVAL "EXPIRED" ON JULY 28, 2003, RESULTING IN NON-COMPLIANCE WITH §54.504(B)(2)(VII) AND FUNDING INELIGIBILITY BETWEEN JULY 29, 2003 AND JANUARY 29, 2004?
- B. WHETHER CPS' FAILURE TO SEEK TEMPORARY REAPPROVAL OF ITS 2000 TECHNOLOGY PLAN WARRANTS THE HARSH REMEDY OF RETURNING FUNDS THAT WERE UTILIZED FOR PROPER PURPOSES, CONSIDERING THE UNIQUE CIRCUMSTANCES IN THIS CASE?

Date:  
Page 2

January 25, 2008

CPS respectfully requests that the FCC grant its request for review. CPS also requests that the FCC find that CPS had an approved technology plan in place for purposes of complying with §54.504 between July 29, 2003 and January 28, 2004, or if the FCC does not find such, determine that CPS is entitled to a waiver for failing to have an approved technology plan in place for the relevant period. With respect to either finding, CPS requests an order directing USAC to reconsider its recovery determination for the relevant period in accordance with the FCC's order.

Respectfully submitted,



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Attorneys for Appellant Board of Education of  
Columbus Public Schools

**BEFORE THE FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, DC**

In the Matter of:	)	
	)	
Request for Review or Waiver of Decision of	)	
the Universal Service Administrator by	)	
	)	
The Board of Education of the Columbus	)	
Public Schools	)	CC Docket No. 02-6
Columbus, Ohio	)	
	)	
Schools and Libraries Universal Service	)	
Support Mechanism	)	
	)	

**I. BACKGROUND INFORMATION**

Under the direction of the Federal Communications Commission (FCC), the Schools and Libraries Division of the Universal Service Administrative Company (hereinafter "USAC") administers a program directed at funding telecommunications within schools and libraries, known as the E-Rate program. "Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounts for eligible telecommunications services, Internet access, and internal connections services." *Request for Review of the Decision of the Universal Service Administrator by Hickory Public Schools, Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-426895, et al., CC Docket No. 02-6, Order, 22 FCC Rcd 11139, p.2 (rel. Jun. 20, 2007). Essentially, the applicant for E-Rate funds must devise a technology plan reflecting its needs and the services it desires and obtain approval of that plan by the relevant state authority. In Ohio, that authority is E-Tech Ohio (formerly "Ohio SchoolNet"). After the applicant selects its service providers through a bidding process and enters into service

agreements, the applicant files an application for funds wherein it details the services needed, the service providers and the funds requested. USAC then issues funding commitment decisions and thereafter reimburses the designated funds.

## II. COLUMBUS PUBLIC SCHOOL'S INTEREST IN THIS MATTER

The party requesting review is the Board of Education of the Columbus Public Schools<sup>1</sup> located at 270 East State Street, Columbus Ohio, 43215 (hereinafter "CPS").<sup>2</sup> On November 28, 2007, USAC issued a Notification of Improperly Disbursed Funds letter with regard to funds disbursed under Funding Request Number (FRN) 1045325 for services rendered during the 2003-2004 funding year, effective July 1, 2003 to June 30, 2004. (Copy attached as Exhibit 1 and incorporated by reference). USAC is seeking a total recovery of \$278,871.00. Of the total recovery sought by USAC, \$263,809.00 is sought because of USAC's claim that these funds were improperly disbursed for part of the funding year allegedly not covered by an approved technology plan between July 29, 2003 and January 29, 2004. The remaining \$15,062.00 involves an allegation that funds were improperly disbursed for ineligible products and services.

CPS, as the direct recipient of these funds, is an interested party and seeks review of this finding and notification only as it pertains to the \$263,809.00 recovery.

## III. STATEMENT OF FACTS

Since the inception of the E-Rate program, CPS has filed hundreds of timely and proper technology funding requests with USAC. (McCarrick Declaration, ¶ 2) In 1999, CPS generated a technology plan in order to procure E-Rate funding for its school district. (McCarrick Declaration, ¶ 3) The technology plan was written to be effective beginning in the 1999-2000 funding year and continuing through the 2004-2005 funding year. (McCarrick Declaration, ¶ 3)

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<sup>1</sup> The Columbus Public Schools are now known as the Columbus City Schools; however, because CPS is the name used through-out the current proceeding, the party seeking review will refer to itself as CPS.

<sup>2</sup> As the Board of Education is the governing body of CPS, the parties will be interchangeably referred to as "CPS."

CPS obtained approval from Ohio SchoolNet (SchoolNet) for this plan, effective July 28, 2000. (Exhibit 2)

In the spring of 2002, CPS began its efforts to revise its approved 2000 technology plan and gain approval of the new plan by SchoolNet. (McCarrick Declaration, ¶ 4) CPS initiated its plan to draft a revised technology plan at the suggestion of SchoolNet and based upon USAC's recommendation that technology plans should not exceed three years. (McCarrick Declaration, ¶ 4) The three year anniversary of CPS' approval of its 2000 technology plan was July 28, 2003. (McCarrick Declaration, ¶ 4) Because of a new and complex system implemented by SchoolNet for gaining technology plan approval, CPS was unable to secure approval of its revised technology plan before the July 28, 2003 anniversary date. (McCarrick Declaration, ¶ 5) As CPS was operating with the understanding that the approval for the 2000 technology plan would continue in effect until the revised plan was approved, CPS continued its efforts to complete SchoolNet's requirements throughout the first half of the 2003-2004 funding year. (McCarrick Declaration, ¶ 5) As of October 7, 2003, USAC had completed the approval process funding for the entire 2003-2004 funding year for CPS's applications. (McCarrick Declaration, ¶ 5)

CPS alerted USAC to the difficulties it encountered with SchoolNet's new online approval system in a letter dated October 28, 2003. (Exhibit 3) CPS also notified USAC that the "new [revised] plan [would] cover the full program year" in the letter. Between July 29, 2003 and January 28, 2004, CPS continued to utilize the installed telecommunication services that had already been approved by SchoolNet in the 2000 technology plan. (McCarrick Declaration, ¶ 6) The revised technology plan was eventually approved by E-Tech Ohio on January 29, 2004. (Exhibit 4) Approximately one year after CPS sent the letter alerting USAC to the procedural anomalies surrounding its revised technology plan approval, USAC paid CPS' submitted claims

for telecommunication services rendered between July 29, 2003 and January 29, 2004. (McCarrick Declaration, ¶ 7) CPS received no further communication from USAC until 2007. (McCarrick Declaration, ¶ 7)

In 2007, USAC sent a letter to CPS notifying it that an audit had been completed with regard to its funding for telephone services requested pursuant to FRN 1045325 for the 2003-2004 funding year. (Exhibit 1) USAC further stated that it mistakenly paid CPS' claim in 2004 and would be seeking return of \$263,809.00 for the portion of the 2003 funding year when the CPS' technology plan was allegedly not "approved." (Exhibit 1). In its report, the auditor determined that while the revised technology plan approved on January 29, 2004, sought "the same type of services being requested and budget as in the previous certified plan", "[f]ailure to maintain a certified technology plan for a period of service represents a deficiency in internal controls over compliance with FCC rules." (Exhibit 5) CPS responded to the auditor's findings, stating that the plan approval delay had no material impact because it was operating "based on an understanding that already installed services would continue in the new planning period." (Exhibit 5) CPS also noted that it was unable to "identify an adopted USAC rule which explicitly makes an approved technology plan invalid after an exact number of days." (Exhibit 5) Finally, CPS argued that USAC's continued acceptance of forms and filings and its action of paying CPS's claims for the entire 2003-2004 funding year, even after receiving notice of the delay in approval of the revised technology plan, led it "to believe [it] had sufficiently complied with program requirements until this 2007 examination." (Exhibit 5)

The auditor responded to CPS's assertions, noting that it did not make a determination that the plan became "invalid," and indicated that its determination was based on the periods of technology plan "certification." (Exhibit 5) The auditor also confirmed that the "new

technology plan did not change the intent to continue services.” (Exhibit 5) While the auditor acknowledged CPS’ efforts of notifying USAC and the FCC of the delay in approval, the auditor was unsympathetic, finding these steps insufficient to comply with the FCC rules. (Exhibit 5) On November 28, 2007, USAC sent CPS a “Notification of Improperly Disbursed Funds Letter[,]” notifying CPS that it would be requesting return of \$263,809.00 received for services rendered between July 29, 2003 and January 29, 2004 pursuant to FRN 1045325. (Exhibit 1)

CPS filed a timely appeal to the FCC pursuant to 47 CFR § 54.719.

#### IV. QUESTIONS PRESENTED FOR REVIEW

- A. WHETHER CPS’ TECHNOLOGY PLAN APPROVAL “EXPIRED” ON JULY 28, 2003, RESULTING IN NON-COMPLIANCE WITH §54.504(B)(2)(VII) AND FUNDING INELIGIBILITY BETWEEN JULY 29, 2003 AND JANUARY 29, 2004?
- B. WHETHER CPS’ FAILURE TO SEEK TEMPORARY REAPPROVAL OF ITS 2000 TECHNOLOGY PLAN WARRANTS THE HARSH REMEDY OF RETURNING FUNDS THAT WERE UTILIZED FOR PROPER PURPOSES, CONSIDERING THE UNIQUE CIRCUMSTANCES IN THIS CASE?

#### V. LAW AND ARGUMENT

- A. CPS’ TECHNOLOGY PLAN APPROVAL DID NOT “EXPIRE” ON JULY 28, 2003, RESULTING IN NON-COMPLIANCE WITH §54.504(B)(2)(VII) AND FUNDING INELIGIBILITY BETWEEN JULY 29, 2003 AND JANUARY 29, 2004.

Title 47, Chapter 1, Part 54 governs the disbursement of universal service funds under the E-Rate program. On July 29, 2003, when CPS’ technology plan was deemed no longer approved for purposes of obtaining E-Rate funding, §54.504(b)(2)(vii) required a certification under oath by an applicant that, among other things “[t]he school, library or consortium including those entities ha[d] a technology plan that ha[d] been certified by its state, the Administrator, or an

independent entity approved by the Commission.”<sup>3</sup> Moreover, USAC, as administrator of the E-Rate program, made additional demands upon applicants, including setting due dates for various form filings and advising applicants regarding the recommended length of technology plans:

Approved technology plans should cover a period of not more than three years. In view of the rapid development cycle of new technologies and services, schools and libraries should approach long-term commitments with caution. However, long-range planning may be important in the case of some lease-purchase arrangements or very large capital investments that require extended commitments. There may also be cases in which an approved plan is longer than three years to conform to federal, state, or local requirements. Whenever an approved plan is longer than three years, there should be a significant review of progress during the third year.

As noted previously, CPS had a technology plan in place for the 1999-2000 funding year through the 2004-2005 funding year, which was approved by SchoolNet in 2000. The services designated in that technology plan, including those listed in FRN 1045325, were provided to CPS at least until the plan was revised and approved by E-Tech on January 29, 2004. Consequently, as CPS “[had] a technology plan that [was] certified by its state” and the services described in that plan were utilized between July 29, 2003 and January 29, 2004, CPS had an approved technology plan for the entire 2003-2004 funding year. Consequently, CPS’ certification regarding the approval status of its technology plan was clearly in compliance with requirements of §54.504(b)(2)(vii).

While the auditor in this case determined that the 2000 technology plan was only approved through July 28, 2003 for purposes of complying with §54.504, it is unclear where the auditor derived the technology plan approval “expiration” date. SchoolNet’s 2000 approval letter does not set a date of approval “expiration.” Rather, it appears that the auditor imputed

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<sup>3</sup> In 2004, in an effort to curb “waste, fraud and abuse,” the FCC issued its Fifth Report and Order, clarifying several issues related to the E-Rate program. The Fifth Report and Order specifically referenced the technology plans and revised §54.504(b)(2)(vii), directing that “applicants with technology plans not yet approved when they file FCC Form 470 must certify that they understand their technology plans must be approved prior to commencement of service.” Language reflecting this sentiment was ultimately added to Chapter 54 as a new section, §54.508.



USAC's suggestion that technology plans be limited to three years. However, USAC's recommendation is clearly not a conclusive directive, and it appears that the FCC has not addressed the maximum life of an approved technology plan. In any event, neither USAC nor the FCC has announced that an exact three year expiration date should be *imputed* to any existing technology plan. CPS should not have been required to get reapproval of its technology plan or lose E-Rate funding because of an arbitrary technology plan termination date.

Moreover, common sense dictates that once specific terms of a technology plan have been "approved," the appropriateness of those terms and the plan does not just "expire" on a specific date, especially when the technology plan submitted reflected the school's continued need for the same services, the applicable service providers and the funds desired, and the actual technology plan as drafted by the school exceeds three years.<sup>4</sup>

Furthermore, CPS has met the FCC's goals in requiring technology plan approval of ensuring that the plans are "based on the reasonable needs and resources of the applicants and are consistent with the goals of the program." As CPS's reasonable needs and resources had already been assessed and deemed provided for in the 2000 technology plan, it is difficult to comprehend how the validity of such a determination could vanish on any single given day.

Finally, even assuming CPS did not have a *state-approved* plan after July 28, 2003, the auditor failed to recognize that the USAC is a proper "approving" body under §54.504(2)(b)(vii). Surely, USAC implicitly approved CPS' continued technology plan when it accepted its claims and paid them after receiving notice that CPS had not acquired renewed approval of its

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<sup>4</sup> Even if the three-year technology plan is really a USAC "rule", CPS clearly complied with the provision that permits plans longer than three years if significant review takes place in the third year. In this case, CPS reviewed the entire technology plan in the middle of the third year in order to assess any changes in needs for the subsequent technology plan.

technology plan between July 29, 2003 and January 29, 2004. As such, USAC should not be permitted to feign ignorance of the continued validity of CPS's 2000 technology plan.

Based on the forgoing, CPS had an approved technology plan in place between July 28, 2003 and January 29, 2004 and therefore was entitled to the funds disbursed under FRN 1045325 for the relevant period.

B. CPS' FAILURE TO SEEK TEMPORARY REAPPROVAL OF ITS 2000 TECHNOLOGY PLAN DOES NOT WARRANT THE HARSH REMEDY OF RETURNING FUNDS THAT WERE SPENT ON PROPER SERVICES, CONSIDERING THE UNIQUE CIRCUMSTANCES IN THIS CASE.

Audits in the E-Rate program are "a tool for the Commission and USAC, as directed by the Commission to ensure program integrity and to detect and deter waste . . . [and] can reveal instances in which universal service funds were improperly disbursed or used in a manner inconsistent with the statute or the Commission's rules." *Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking*, 20 FCC Rcd 11308, 11337, pp. 69 & 70 (2005). USAC, as the administrator of the funds, recovers any erroneously disbursed funds. *Schools and Libraries Fifth Report and Order*, 19 FCC Rcd 15808, 15814, n. 37 (2004). However, the FCC has noted that "recovery may not be appropriate for violations of all rules regardless of the reason for their codification." *Id.* at 15815, p. 19. For example, the FCC has determined that "recovery may not be appropriate for a violation of procedural rules codified to enhance operation of the [E-R]ate program," and if the procedural violation is unintentionally missed during the application phase and funds are subsequently disbursed, "the Commission will not require that they be recovered, except to the extent that such rules are essential to the financial integrity of the program, as designated by the agency, or that circumstances suggest the possibility of waste, fraud or abuse, which will be evaluated on a case-by-case basis." *Id.*

In this case, CPS has done nothing to detract from the E-Rate program's "integrity" and has not committed any waste because of its failure to reapprove its technology plan for the short period that it experienced technical difficulties with SchoolNet's new online technology plan approval system. Rather CPS has been an outstanding participant of the E-Rate program, utilizing its funding to provide technological services to 128 buildings and approximately 55,000 students. CPS has appropriately complied with the FCC and USAC's rule in hundreds of other funding requests and USAC has paid these claims without question. As demonstrated previously, CPS had an approved technology plan that was adhered to between July 29, 2003 and January 29, 2004. It is hard to imagine how the rote reapproval of an already approved technology plan that was intended from inception to cover the relevant time period could be "essential to the financial integrity of the program" so as to warrant recovery of funds disbursed five years ago. Moreover, the FCC's lack of reference to the maximum duration of technology plan approvals in Chapter 54 or its subsequent orders also indicates that reapproval of a technology plan while approval of a revised technology plan is pending is "not essential to the financial integrity of the program."

Additionally, there is absolutely no allegation that this procedural irregularity resulted in any waste, fraud, or abuse. Finally, FCC's example of a substantive rule violation that does not rise to the level of waste, fraud or abuse clearly reveals that the FCC only deems recovery necessary when the substance of the E-Program is affected. Specifically, the FCC noted that a request for an service ineligible for payment from the universal service fund would be a substantive rule violation where recovery would be warranted. In this case, there is no allegation that CPS received the improper services or used improper service providers under FRN 1045325. Rather, CPS complied fully with the substantive provisions of the E-Rate program to acquire the

funding for this request. Based on the foregoing, recovery of funds already disbursed for the 2003-2004 funding year is not warranted.

Finally, even if CPS was required to have obtained reapproval of its technology plan for the period between July 29, 2003 and January 29, 2004 in order to maintain E-Rate funding for the 2003-2004 funding year, the FCC may, on its own motion and for good cause shown, waive this rule. The FCC has determined that:

A rule may be waived where the particular facts make strict compliance inconsistent with the public interest. In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. In sum, waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule. (footnotes omitted).

*Request for Review of the Decision of the Universal Service Administrator by Bishop Perry Middle School, Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-487170, CC Docket No. 02-6, Order, 22 FCC Rcd 11139, p.2 (rel. May 19, 2006).

Waiver is clearly warranted in this case. First, the FCC has routinely waived compliance for violations of strictly procedural violations when the record contains no evidence of an intent to “defraud or abuse the E-rate program.” *See Request for Review of the Decision of the Universal Service Administrator by Hickory Public Schools, Schools and Libraries Universal Service Support Mechanism*, 22 FCC Rcd at 11142, p. 5); *See Requests for Review of the Decisions of the Universal Service Administrator by Brownsville Independent School District, Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-482620, et al., CC Docket No. 02-6, Order, 22 FCC Rcd 6045, n. 17 & 21) (rel. Mar. 28, 2007)<sup>5</sup>; *Request for*

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<sup>5</sup> While not conceding that a waiver of the Commissions rules is required in this case because CPS had an approved technology plan in place for the relevant time period, in *Brownsville*, the FCC granted a waiver to the Cleveland

*Review of the Decision of the Universal Service Administrator by Cincinnati City School District, Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-376499, CC Docket No. 02-6, Order, p. 8) (rel. May 26, 2006). As noted previously, there is absolutely no allegations or evidence that CPS intended to defraud or abuse the E-Rate program as demonstrated by CPS's history with the E-Rate program and the happenstance nature of the current alleged rule violation. Moreover, in this case, USAC's own dilatory conduct compounded the confusion surrounding the relevant period when it accepted and paid CPS's claims after it was notified that the revised technology plan had not been approved by E-Tech before services for the 2003-2004 funding year began. Furthermore, as the services requested with regard to FRN 1045325 in the technology plan approved on January 29, 2004 were "the same type requested and budgeted as in the previous plan, there was clearly no intent to abuse the substantive provisions of the E-rate program. Finally, CPS will encounter an enormous burden to reallocate current funds in order to pay for telecommunication services that were provided five years ago. Strictly enforcing the "approval" requirement would unnecessarily harm a large school district servicing thousands of students for what amounts to a procedural error that does not take away from the goal of the E-Rate program of providing affordable telecommunication services to the public. Clearly, the public interest would not be served by seeking recovery from CPS.

Consequently, if reapproval of CPS' technology plan was required under its rules, the FCC should grant CPS a waiver for the omission.

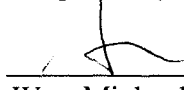
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County Memorial Library where it based their E-Rate funding applications "on approved technology plans from prior years while they updated those plans and obtained approval consistent with state time-frames and procedures." As this reflects CPS' situation, the FCC should grant it a waiver as well.

VI. RELIEF REQUESTED

CPS respectfully requests that the FCC grant its request for review. CPS also requests that the FCC find that CPS had an approved technology plan in place for purposes of complying with §54.504 between July 29, 2003 and January 28, 2004, or if the FCC does not find such, determine that CPS is entitled to a waiver for failing to have an approved technology plan in place for the relevant period. With respect to either finding, CPS requests an order directing USAC to reconsider its recovery determination for the relevant period in accordance with the FCC's order.

Respectfully submitted,



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Attorneys for Appellant Board of Education of  
Columbus Public Schools

STATE OF OHIO )  
 ) SS: DECLARATION OF JACK MCCARRICK  
COUNTY OF FRANKLIN )

1. I am an analyst in the Information Support Services Department of the Columbus Public Schools (CPS) and the designated E-Rate Coordinator.

2. Since the inception of the E-Rate program, CPS has filed hundreds of timely and proper technology funding requests with USAC.

3. In 1999, CPS generated a technology plan in order to procure E-Rate funding for its school district. The technology plan was written to be effective beginning in the 1999-2000 funding year and continuing through the 2004-2005 funding year. CPS obtained approval from Ohio SchoolNet (SchoolNet) for this plan, effective July 28, 2000.

4. In the spring of 2002, CPS began its efforts to revise its approved 2000 technology plan and gain approval of the new plan by SchoolNet. CPS initiated its plan to draft a revised technology plan at the suggestion of SchoolNet and based upon USAC's recommendation that technology plans should not exceed three years. The three year anniversary of CPS' approval of its 2000 technology plan was July 28, 2003.

5. Because of a new and complex system implemented by SchoolNet for gaining technology plan approval, CPS was unable to secure approval of its revised technology plan before the July 28, 2003 anniversary date. As CPS was operating with the understanding that the approval for the 2000 technology plan would continue in effect until the revised plan was approved, CPS continued its efforts to complete SchoolNet's requirements throughout the first half of the 2003-2004 funding year. As of October 7, 2003, USAC had completed the approval process funding for the entire 2003-2004 funding year for CPS's applications.

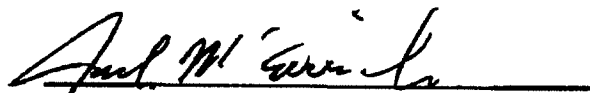
6. Between July 29, 2003 and January 28, 2004, CPS continued to utilize the installed telecommunication services that had already been approved by SchoolNet in the 2000 technology plan.

7. USAC eventually paid CPS' submitted claims for telecommunication services rendered between July 29, 2003 and January 29, 2004. CPS received no further communication from USAC until 2007.

8. All Exhibits attached to CPS' appellate brief are true and accurate copies of documents maintained by CPS.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and is based upon my personal knowledge.

Executed on: January 25, 2008

  
Jack McCarrick



**Schools & Libraries Division****Notification of Improperly Disbursed Funds Letter****Funding Year 2003: 7/01/2003 - 6/30/2004**

November 28, 2007

**JACK MCCARRICK  
COLUMBUS PUBLIC SCHOOLS  
1091 King Avenue  
Columbus, OH 43212 2204**

**Re: Form 471 Application Number: 376510  
Funding Year: 2003  
Applicant's Form Identifier: Y6-471-03  
Billed Entity Number: 129175  
FCC Registration Number: 0004855359  
SPIN Name: The Ohio Bell Telephone Company  
Service Provider Contact Person: Michael Swisher**

Our routine review of Schools and Libraries Program funding commitments has revealed certain applications where funds were disbursed in violation of program rules.

In order to be sure that no funds are used in violation of program rules, the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) must now recover these improper disbursements. The purpose of this letter is to inform you of the recoveries as required by program rules, and to give you an opportunity to appeal this decision. USAC has determined the applicant is responsible for all or some of the program rule violations. Therefore, the applicant is responsible to repay all or some of the funds disbursed in error.

This is NOT a bill. The next step in the recovery of improperly disbursed funds process is for SLD to issue you a Demand Payment Letter. The balance of the debt will be due within 30 days of the Demand Payment Letter. Failure to pay the debt within 30 days from the date of the Demand Payment Letter could result in interest, late payment fees, administrative charges and implementation of the "Red Light Rule." Please see the "Informational Notice to All Universal Service Fund Contributors, Beneficiaries, and Service Providers" at <http://www.universalservice.org/fund-administration/tools/latest-news.aspx#083104> for more information regarding the consequences of not paying the debt in a timely manner.

**Funding Disbursement Report  
for Form 471 Application Number: 376510**

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Funding Request Number: 1045325  
Services Ordered: TELCOMM SERVICES  
SPIN: 143001688  
Service Provider Name: The Ohio Bell Telephone Company  
Contract Number: MTM  
Billing Account Number: 614-365-5000-696  
Site Identifier: 129175  
Funding Commitment: \$701,520.00  
Funds Disbursed to Date: \$547,599.05  
Funds to be Recovered from Applicant: \$278,871.00

**Disbursed Funds Recovery Explanation:**

After a thorough investigation, it has been determined that the funds were improperly disbursed on this funding request. During the course of an audit, it was determined that the technology plan did not cover the entire funding year for this funding request. Program rules require that a technology plan be effective during the entire funding year in which the applicant is seeking support for services other than basic telecommunication service. On the Form 486 it was indicated that the services for FRN 1045325 began on 07/01/2003. Additionally, your Form 471 indicated 06/30/2004 as a Service End Date for this FRN. During the course of review it was discovered that your technology plan became effective on January 29, 2004, which was after the date your services commenced for this FRN. Therefore, USAC will seek recovery of improperly disbursed funds for this FRN in the amount of \$263,809.00 for the part of the funding year not covered with the technology plan (7/29/03 to 1/28/04).

In addition, it was determined that funding was provided for the following ineligible items: Basic Voicemail Service, Additional Directory Listing, and CD-Rom Charge. The pre-discount cost associated with these items is \$14,778.00, \$3,913.00, and \$375.00 respectively, for a total ineligible amount of \$19,066.00. At the applicant's 79 percent discount rate this resulted in an improper disbursement of \$15,062.00. FCC rules provide that funding may be approved only for eligible products and/or services. The USAC web site contains a list of eligible products and/or services. See the web site, [www.universalservice.org/sl/about/eligible-services-list.aspx](http://www.universalservice.org/sl/about/eligible-services-list.aspx) for the Eligible Services List. In this situation, the applicant made the certifications on the BEAR Form indicating that the services and/or equipment provided to the applicant were eligible for funding. On the BEAR Form, the authorized person certifies at Block 3, Item A that discount amounts for which reimbursement is sought represent charges for eligible services delivered to and used by eligible entities. Therefore, USAC has determined that the applicant is responsible for this rule violation. Accordingly, USAC is seeking recovery of \$15,062.00 from the applicant for this rule violation.

The total recovery being sought from the applicant is \$278,871.00.



Ohio SchoolNet

District Columbus City IRN 043802  
District Contact Name Pete Trautman  
Phone Number 614-365-5000 Email \_\_\_\_\_

☒ Approved Technology Plan – meets all criteria

☐ Technology Plan does not meet criteria. It may be resubmitted to the Super Region Manager after editing to reflect recommendations listed.

Reviewer Name Martin McKay

Date Reviewed 7/28/00

Super Region Manager Patricia Peoples *PP Peoples*

Date 7/28/00

OFFICE OF INFORMATION, LEARNING AND TECHNOLOGY SERVICES  
1320 Arthur E. Adams Drive - Columbus, OH 43221 • 614 728-TECH • Fax: 614 728-1899  
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## EXHIBIT 2

### Columbus City Schools District Technology Plan

1999-2004

#### I. Technology Advisory Committee

- Evidence of committee members representing the community.

Name	Community Role
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## COLUMBUS PUBLIC SCHOOLS

**OFFICE OF THE CIO**  
1091 King Avenue Columbus, Ohio 43212  
**(614) 365-6193**

October 28, 2003

Universal Service Administrative Company  
Schools and Libraries Division  
Attention: PLA Team

Re: Technology Plan

We find ourselves in an unusual situation and felt the best way to handle it was to explain the circumstances. Today is the deadline to file Form 486 identifying that services began July 1, 2003.

Our prior approved Technology Plan was still in effect when this program year began and we were actively engaged in preparing the new plan. Since then, our plan has officially expired before the revised plan was approved.

The services listed on the attached form are operational telecommunications services that continue year to year without regard to the program approval.

We continue to make progress on the new plan but now have a period within the program year that is not yet covered by an approved plan. The new plan will cover the full program year. Ohio SchoolNet requires that we assemble our plan using a new online system. Our efforts to date have been available for their inspection.

This letter is associated with our Form 486 filing identified as Y6-486-01.

The issue is also documented in case 1-4221899.

We have historically sought reimbursement at year end on our approved funding requests. We expect to have the new plan approved by all necessary parties before we file any claims against these FRN's.

Sincerely,

Richard E. Reynolds  
Chief Information Officer

The Ohio SchoolNet Commission  
2323 W. 5th Avenue  
Suite 100  
Columbus, OH 43204

Jan 29, 2004

Columbus City SD - 043802  
270 E State St  
Columbus, OH 43215  
Phone: (614) 365-5000

Plan Committee Leader Approval By: Jack McCarrick  
Treasurer Approval By: Jerry Buccilla  
Superintendent Approval By: Gene Harris  
Ohio SchoolNet Reviewer: Carol Van Deest

Congratulations! The Ohio SchoolNet Commission has approved your Technology Plan for the 2003-2004, 2004-2005, and 2005-2006 school years.

Certification Period: Jan 29, 2004 - Jun 30, 2006

Please retain this document for future reference. A copy of this technology plan approval certification is also available in your district's technology plan archive within the Technology Planning Tool (TPT) application [<http://www.osn.state.oh.us/go/tpt>]. Please note that an approved technology plan is an eligible requirement for most Ohio SchoolNet grant programs.

Evaluation is a critical component of technology planning. Therefore, even though your Technology Plan has been approved for three (3) school years, Ohio SchoolNet recommends that you review and revise your plan regularly, at minimum on an annual basis, to accommodate emerging technologies and other changes.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Julie Fox,  
Executive Director, Ohio SchoolNet



KPMG LLP  
1860 International Drive  
McLean, VA 22102

### Independent Accountants' Report

Columbus Public Schools

Universal Service Administrative Company

Federal Communications Commission:

We have examined Columbus Public School's (Beneficiary Number 129175) compliance, relative to Funding Request Number 1045325, with the Federal Communications Commission's 47 C.F.R. Part 54 Rules and related Orders identified in the accompanying Attachment 1 relative to disbursements of \$547,599 for telecommunication services made from the Universal Service Fund during the fiscal year ended September 30, 2005 and relative to its application and service provider selection processes for Funding Year 2003. Management is responsible for compliance with those requirements. Our responsibility is to express an opinion on Columbus Public School's compliance based on our examination.

Our examination was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants and the standards applicable to attestation engagements contained in *Government Auditing Standards*, issued by the Comptroller General of the United States and, accordingly, included examining, on a test basis, evidence about Columbus Public School's compliance with those requirements and performing such other procedures as we considered necessary in the circumstances. We believe that our examination provides a reasonable basis for our opinion. Our examination does not provide a legal determination on Columbus Public School's compliance with specified requirements.

Our examination disclosed material noncompliance with technology plan certification and service eligibility requirements applicable to Columbus Public Schools relative to disbursements made from the Universal Service Fund during the fiscal year ended September 30, 2005 and relative to its application process for Funding Year 2003. Detailed information relative to the material noncompliance is described in items 129175-2005-01 and -02 in Attachment 2.

In our opinion, except for the material noncompliance described in the third paragraph, Columbus Public Schools has complied, in all material respects, relative to Funding Request Number 1045325, with the aforementioned requirements relative to disbursements of \$547,599 for telecommunication services made from the Universal Service Fund during the fiscal year ended September 30, 2005 and relative to its application and service provider selection processes for Funding Year 2003.

In accordance with *Government Auditing Standards*, we are required to report findings of deficiencies in internal control that are material to compliance with the aforementioned requirements. We performed our examination to express an opinion on whether Columbus Public Schools complied with the aforementioned requirements and not for the purpose of expressing an opinion on the internal control over such compliance; accordingly, we express no such opinion. Our examination disclosed findings that are required to be reported under *Government Auditing Standards* and those findings, along with the views of management, are described in items 129175-2005-01 and -02 in Attachment 2.

**KPMG**

In addition, and in accordance with *Government Auditing Standards*, we noted an immaterial instance of noncompliance that we have reported to the management of Columbus Public Schools in a separate letter dated March 16, 2007.

**KPMG LLP**

March 16, 2007

**Attachment 1**

**Federal Communications Commission's (FCC's) 47 C.F.R. Part 54 Rules and Related Orders  
with which Compliance was Examined**

**Document Retention Matters:**

Section 54.516 (a), which was effective from July 17, 1997 through November 11, 2004

**Application Matters:**

Section 54.501 (b), which was effective as of July 17, 1997

Section 54.504 (a), which was effective as of July 17, 1997

Section 54.504 (b), which was effective as of July 17, 1997

Section 54.504 (b) (1), which was effective as of July 17, 1997

Section 54.504 (b) (2), which was effective as of July 17, 1997

Section 54.504 (c), which was effective as of February 12, 1998

Section 54.505 (b), which was effective as of July 17, 1997

Section 54.505 (c), as revised, which was originally effective as of July 17, 1997

Section 54.502, which was effective as of February 12, 1998

FCC Order 03-313, paragraph 56, which was issued on December 8, 2003



**Attachment 1, continued****Federal Communications Commission's (FCC's) 47 C.F.R. Part 54 Rules and Related Orders  
with which Compliance was Examined, continued****Service Provider Selection Matters:**

Section 54.504 (a), which was effective as of July 17, 1997

Section 54.504 (b) (4), which was effective as of February 12, 1998

Section 54.511 (a), which was effective as of July 17, 1997

FCC Order 03-101, paragraph 24, which was issued on July 15, 2003

FCC Order 00-167, paragraph 10, which was issued on May 23, 2000

**Receipt of Services and Reimbursement Matters:**

Section 54.505 (a), which was effective as of July 17, 1997

Section 54.514 (b), which was effective as of August 14, 2003

Section 54.504 (b) (2) (ii), which was effective as of July 17, 1997

Section 54.500 (b), which was effective as of August 14, 2003

Section 54.504 (b) (2) (iii), which was effective as of July 17, 1997

Section 54.513 (c), which was effective as of March 11, 2004

Section 54.504 (b) (2) (v), which was effective as of July 17, 1997

Section 54.504, which was effective as of July 17, 1997

Section 54.504 (g), which was effective as of March 11, 2004

FCC Order 03-313, paragraph 60, which was issued on December 8, 2003

**Attachment 2****Detailed Information Relative to Material Noncompliance (Findings)**

(presented in accordance with the standards applicable to attestation engagements contained  
in *Government Auditing Standards*)

**Finding No.** 129175-2005-01

**Condition**

At the time of filing the Federal Communications Commission ("FCC") Form 470, Columbus Public Schools ("Beneficiary") had an approved technology plan in place which had been certified by the FCC authorized approver, eTech Ohio (formerly Ohio SchoolNet Commission), for the period July 28, 2000 to July 28, 2003. The technology plan itself was a five year plan for the years 2000 through 2005.

Subsequent to filing the FCC Form 470, the Beneficiary was in the process of preparing a new technology plan utilizing the online program required by eTech Ohio. In October 2003, the Beneficiary's Schools and Libraries Program Coordinator became aware that the Beneficiary did not have a certified technology plan and included a letter to the Schools and Libraries Program with its FCC Form 486 to that effect. Due to timing issues and the complexity of the new online program, the subsequent technology plan was not approved by eTech until January 29, 2004, which was after services under Funding Request Number ("FRN") 1045325 had begun. The letter notifying the Beneficiary of the approval of this technology plan noted a certification period of January 29, 2004 to June 30, 2006. Accordingly, the Beneficiary did not have a technology plan certified by eTech Ohio for the period of July 29, 2003 through January 28, 2004.

KPMG notes that FRN 1045325 was for Centrex services. Based on our review of the technology plan approved on January 29, 2004, we noted the same type of services being requested and budgeted as in the previous certified plan. KPMG specifically identified discussion within the new plan stating, "Telephone service continues to be primarily in administrative area....Building phone systems and services are being re-evaluated as part of the Facilities Master Plan."

**Criteria**

Per FCC Rule 54.504 (b) (2) (vii), schools/districts applying for support were required to have a technology plan that had been certified by its state, the Universal Service Administrative Company ("USAC") or an independent entity approved by the FCC at the time of filing the FCC Form 470.

Attachment 2, continued

**Detailed Information Relative to Material Noncompliance (Findings), continued**  
**(presented in accordance with the standards applicable to attestation engagements contained**  
**in *Government Auditing Standards*)**

<b>Cause</b>	Due to timing issues and the complexity of the new online program required by eTech Ohio, the technology plan was not approved by eTech Ohio until January 29, 2004. Failure to maintain a certified technology plan for the period of service represents a deficiency in internal controls over compliance with FCC Rules within the Beneficiary's application process.
<b>Effect</b>	The monetary effect of this finding is that the \$263,809 of Schools and Libraries funds disbursed for services during the period July 29, 2003 through January 28, 2004 are subject to recovery by USAC. This amount was determined by multiplying the \$333,935 undiscounted cost of those services by the Beneficiary's 79% discount rate.
<b>Recommendation</b>	<p>We recommend the Beneficiary obtain a certified technology plan for the entire funding year. In doing so, all funds received will be in compliance with the indicated FCC rules and regulations. We note that the current FCC Rules require that the technology plan must be certified before receipt of services.</p> <p>KPMG recommends that USAC seek recovery based on this finding consistent with applicable FCC Rules and Orders.</p>
<b>Beneficiary Response</b>	<p>Form 471 filings significantly determine an applicant's program participation during any funding year. Technology plan approvals after the form 471 is filed have limited opportunity to affect an applicant's program activity until the next filing window. The plan approval delay in question had no material impact on the district direction. The Form 471 filing and the plan update were based on an understanding that the already installed services would continue in the new planning period. In this case, voice telephone service removal was never a planning option.</p> <p>We have not been able to identify an adopted USAC rule which explicitly makes an approved technology plan invalid after an exact number of days. Exact day planning is not a common practice in "higher level" technology plans. The finding is based on exact day determinations. We believe this finding is also based on the perception that an explicit plan length rule exists. We note that technology plans identify course adjustments and do not necessarily reauthorize each installed service. USAC processing delays are disruptive to all technology plans.</p>

Attachment 2, continued

**Detailed Information Relative to Material Noncompliance (Findings), continued**  
**(presented in accordance with the standards applicable to attestation engagements contained**  
**in *Government Auditing Standards*)**

We notified both USAC and the FCC that our technology planning effort had been delayed by significant changes in State requirements. The program continued to accept our forms, our filings, and paid claims leading us to believe we had sufficiently complied with program requirements until this 2007 examination.

We note that the Fifth Report and Order was adopted after this funding period. The report has a large amount of content regarding technology planning, but is silent on exact technology plan length and expiration. In paragraph 61 the report states "Only if an applicant desires to order services beyond the scope of its existing technology plan does it need to prepare and seek timely approval of an appropriately revised technology plan."

Technology plans do not abruptly end, they are replaced by periodic updates and recertifications. We do not believe there is a reasonable basis for a finding.

**KPMG Comment on  
Beneficiary Response**

With respect to timing of a technology plan becoming "invalid", we made no such determination. Correspondence we received directly from eTech Ohio clearly noted the periods of "certification" for the two technology plans as described in the Condition above. As described in the Condition above, we agree that the new technology plan did not change the intent to continue services related to FRN 1045325.

KPMG noted the Beneficiary did take steps to notify both USAC and the FCC. However, better practices would indicate the Beneficiary obtain further guidance/approval from USAC regarding compliance with all program requirements or to obtain a waiver.

KPMG notes that the Fifth Report and Order was adopted after Funding Year 2003. Consequently, this order was not applicable to the Funding Year under examination.

Attachment 2, continued

**Detailed Information Relative to Material Noncompliance (Findings), continued**  
**(presented in accordance with the standards applicable to attestation engagements contained**  
**in *Government Auditing Standards*)**

**Finding No.** 129175-2005-02

**Condition** KPMG obtained all service provider billings related to the telecommunication services funded under FRN 1045325 and compared those services to the Eligible Services Listing ("ESL") for Funding Year 2003. Based on that comparison, we noted three types of services, paid for by Columbus Public School and invoiced to USAC, which were ineligible items during Funding Year 2003. The ineligible items and their associated costs for the periods during which the Beneficiary had certification of its technology plan are as follows:

1. Basic Voice Mail Service - \$11,675 (\$14,778 undiscounted cost multiplied by the Beneficiary's 79% discount rate) - (February 2004 through June 2004)
2. Additional Directory Listing - \$3,091 (\$3,913 undiscounted cost multiplied by the Beneficiary's 79% discount rate) - (July 2003 and February 2004 through June 2004)
3. CD-ROM Charge - \$296 (\$375 undiscounted cost multiplied by the Beneficiary's 79% discount rate) - (July 2003 and February 2004 through June 2004)

**Criteria** Per FCC Rule 54.502, schools/districts applying for support are to request only eligible goods and services.

Per FCC Rule 54.505 (a), schools/districts are to apply their discount percentage to the appropriate pre-discount price.

Per FCC Rule 54.504 (g), schools/districts are to allocate the costs of any contract that includes both eligible and ineligible components to those eligible and ineligible components in the related request for discount.

**Cause** The Beneficiary sought reimbursement for the full amount of the service provider invoices without a detailed review of their components for eligibility. This failure to perform a detailed review of the invoices for the eligibility of its components represents a deficiency in internal controls over compliance with FCC Rules within the Beneficiary's reimbursement process.

Attachment 2. continued

**Detailed Information Relative to Material Noncompliance (Findings), continued**  
**(presented in accordance with the standards applicable to attestation engagements contained**  
**in *Government Auditing Standards*)**

<b>Effect</b>	The monetary effect of this finding is that the \$15,062 reimbursed relative to the ineligible services is subject to recovery by USAC. That amount includes \$11,675 for Voice Mail, \$3,091 for directory listings and \$296 for CD-ROMs.
<b>Recommendation</b>	<p>We recommend the Beneficiary consult the Eligible Service List prior to requesting future goods and services to ensure their eligibility for Schools and Libraries program reimbursement. Further, the Beneficiary needs to perform a review of service provider billings to identify ineligible charges prior to requesting reimbursement from USAC.</p> <p>KPMG recommends that USAC seek recovery based on this finding consistent with applicable FCC Rules and Orders.</p>
<b>Beneficiary Response</b>	The unreported ineligible items found in the billings were significantly invisible in the 12,000 pages of billing documents. We had removed the ineligible items that were apparent prior to filing the claim. It took USAC level research in other records to quantify the finding costs when the omission was discovered. During this period the eligibility of voice mail changed from ineligible to eligible in USAC documents. We believe the program's excessive complexity, changing program rules and weaknesses in common carrier billing practices were all factors in the claim preparation error.